

for any technical services provided by uncertified subcontractors.

[67 FR 70128, Nov. 21, 2002, as amended at 68 FR 14134, Mar. 24, 2003]

§ 652.5 Program participant acquisition of technical services.

(a) Program participants may obtain technical assistance directly from the Department or from a certified technical service provider.

(b) To acquire technical assistance directly from the Department, program participants should contact their local USDA Service Center.

(c) To acquire technical services from a technical service provider, program participants must:

(1) Comply with the program agreement when acquiring technical services; and

(2) Select a certified technical service provider from the approved list of technical service providers.

(d) To obtain payment for technical services, the program participant must submit to the Department an invoice, supporting documentation, and a request for payment. The Department may pay a program participant for technical services provided by a technical service provider hired by the program participant through a reimbursement payment made directly to the program participant; or upon receipt of an assignment of payment from the program participant, a payment made directly to the technical service provider.

(1) A reimbursement payment made directly to the program participant; or

(2) Upon receipt of an assignment of payment from the program participant, a payment made directly to the technical service provider.

(e) The Department will identify in the particular program contract or agreement the payment provisions for technical service providers hired directly by the program participant.

(f) Unless authorized under paragraph (g) of this section, the program participant must enter into a program contract or agreement with the Department prior to acquisition of technical services by a technical service provider.

(g) A program participant may be reimbursed for technical service provider

costs incurred prior to entering into a program contract or agreement as long as the individual meets the eligibility requirements for participating in the program. These costs include program related activities that need to be accomplished prior to entering into a program contract or agreement as well as the development of a conservation plan that is subsequently incorporated into the program contract or agreement. To be reimbursed for these technical service provider costs, the program participant must:

(1) Utilize the services of a certified technical service provider from the NRCS approved list of technical service providers; and

(2) Provide to NRCS invoice and related documentation of the technical services provided.

(h) Program participants must authorize in writing to the Department the disclosure of their records on file with the Department that they wish to make available to specific technical service providers.

(i) Payments for technical services will only be made one time for the same technical service provided unless, as determined by the Department, the emergence of new technologies or major changes in the participant's farming or ranching operations necessitate the need for additional technical services.

(j) *Payment rates.* (1) NRCS will establish payment rates by calculating not-to-exceed rates for technical services. NRCS will calculate not-to-exceed rates using price data that it may acquire through various sources that it deems reliable.

(2) Establishing not-to-exceed payment rates. (i) NRCS will analyze the pricing information using a standardized methodology.

(ii) Not-to-exceed payment rates will be established nationally on a State by State basis for categories of technical services.

(iii) NRCS will coordinate payment rates between adjacent States to ensure consistency where similar resource conditions and agricultural operations exist. Payment rates may vary to some degree between States due to differences in State laws, the

cost of doing business, competition, and other variables.

(iv) NRCS will review payment rates annually, or more frequently as needed, and adjust the rates based upon data from existing contracts, Federal cost rates, and other appropriate sources.

(v) NRCS may adjust payment rates, as needed, on a case-by-case basis, in response to unusual conditions or unforeseen circumstances in delivering technical services such as highly complex technical situations, emergency conditions, serious threats to human health or the environment, or major resource limitations. In these cases, NRCS will set a case-specific not-to-exceed payment rate based on the Department's determination of the scope, magnitude, and timeliness of the technical services needed.

(3) Cost share credits. In order to encourage competitive pricing, a program participant may earn credits toward their cost-share for practice installation under a program contract when a participant selects a technical service provider with prices below the not-to-exceed rates for the provision of technical services. The credits earned will be equal to a percentage of the savings generated by the participant by choosing a lower cost technical service provider. However, in no cases may the application of cost share credits to a program contract result in the Department exceeding any statutory limitations on cost sharing or payments for a particular program.

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§ 652.6 Department delivery of technical services.

(a) The Department may procure the services of certified technical service providers through a contract or a contribution agreement to assist the Department in providing technical services necessary to develop and implement the conservation programs subject to this part. The Department shall only enter into a contribution agreement with a certified technical service provider if the certified technical service provider contributes at least 50 percent of the technical services needed to accomplish the goals of the project

under which the contribution agreement is entered. The Chief may establish minimum contribution rates or limit the utilization of contribution agreements.

(b) The Department may also enter into a cooperative agreement after competition as specified by part 3015 of this title if the principal purpose of the cooperative agreement is to transfer a thing of value to carry out a public purpose of support or stimulation authorized by law. The Chief or the Administrator, Farm Service Agency (FSA) may limit the utilization of cooperative agreements by NRCS or FSA, respectively. Only the Chief, NRCS or the Administrator, FSA may make a determination that competition is not deemed appropriate for a particular transaction and such determination shall only be based where a non-competitive award is in the best interest of the Government and necessary to the accomplishment of the goals of the program.

(c) A certified technical service provider, or an individual providing technical services under the auspices of a technical service provider's certification, shall not be eligible to receive payment under a program contract or agreement for technical services provided directly to a program participant if that technical service provider has entered into a contract, cooperative agreement, or contribution agreement with NRCS to provide technical services to that program participant.

(d) The Department will, to the extent practicable, ensure that the amounts paid for technical service under this part are consistent across conservation program areas, unless specific conservation program requirements include additional tasks.

§ 652.7 Quality assurance.

(a) NRCS will review, in consultation with the Farm Service Agency, as appropriate, the quality of the technical services provided by technical service providers. As a requirement of certification, technical service providers will be required to develop and maintain documentation in accordance with Departmental manuals, handbooks, and technical guidance for the technical